



Journal of the Senate

State of Indiana

114th General Assembly

First Regular Session

Thirty-seventh Meeting Day

Tuesday Afternoon

March 29, 2005

The Senate convened at 1:33 p.m., with the President of the Senate, Rebecca S. Skillman, in the Chair.

Prayer was offered by Pastor David Harness, Worship Center, Indianapolis, the guest of Senator Brent Waltz.

The Pledge of Allegiance to the Flag was led by Senator Waltz.

The Chair ordered the roll of the Senate to be called. Those present were:

Alting	Long
Antich-Carr	Lubbers
Bowser	Lutz <input type="checkbox"/>
Bray	Meeks
Breaux	Merritt
Broden	Miller
Clark	Mishler
Craycraft	Mrvan
Dillon	Nugent
Drozda	Paul
Ford	Riegsecker
Gard	Rogers
Garton	Server
Harrison	Simpson
Heinold	Sipes
Hershman	Skinner
Howard	Smith
Hume	Steele
Jackman	Waltz
Kenley	Waterman
Kruse	Weatherwax
Lanane	Wyss
Landske	Young, M.
Lawson	Young, R.
Lewis	Zakas

Roll Call 318: present 49; excused 1. [Note: A ☐ indicates those who were excused.] The Chair announced a quorum present. Pursuant to Senate Rule 5(d), no motion having been heard, the Journal of the previous day was considered read.

RESOLUTIONS ON FIRST READING

Senate Concurrent Resolution 54

Senate Concurrent Resolution 54, introduced by Senator Heinold:

A CONCURRENT RESOLUTION promoting the use of the "A Child is Missing" program.

Whereas, A Child is Missing ("ACIM") was founded in 1996 as

a non-profit organization headquartered in Fort Lauderdale, Florida;

Whereas, ACIM is devoted to assisting law enforcement in search and early recovery efforts during the critical initial hours following a child, elderly or disabled person's disappearance with a rapid-response neighborhood notification program;

Whereas, Initiated only by law enforcement officials, ACIM is currently available in 13 different states, including Indiana;

Whereas, ACIM utilizes high-tech telephony to make 1,000 calls in sixty seconds, allowing ACIM to reach thousands of people in the area surrounding the disappearance in rapid time;

Whereas, At least 83 individuals have been recovered utilizing the service of ACIM and at least 4 of these individuals were located in Indiana; and

Whereas, ACIM is a beneficial resource and the Indiana General Assembly seeks to promote awareness of this service and encourage all Indiana law enforcement officials to utilize this program: Therefore,

Be it resolved by the Senate of the General Assembly of the State of Indiana, the House of Representatives concurring:

SECTION 1. The Indiana General Assembly encourages all law enforcement officials throughout the State of Indiana to use the A Child is Missing program to assist in locating a child, elderly or disabled person who has disappeared.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to the Indiana Sheriff's Association, to the Indiana Association of Cities and Towns, and to the Indiana Fraternal Order of Police.

The resolution was read in full and referred to the Committee on Corrections, Criminal, and Civil Matters.

Senate Resolution 25

Senate Resolution 25, introduced by Senator Waterman:

A SENATE RESOLUTION memorializing the Congress of the United States to give due consideration to the readiness of the Republic of China on Taiwan for membership in the United Nations.

Whereas, The Republic of China on Taiwan ("Taiwan") has established a democratic, multiparty political system, and its show of diplomacy aimed at national unification demonstrates its

progressive spirit as a government and a people. Inclusion of Taiwan in the United Nations would only further the universality of this essential global forum;

Whereas, Already having provided many developing nations with financial assistance, as well as overseas aid, training, and disaster relief, Taiwan has amply illustrated its concern for the welfare of the world; and

Whereas, The government of Taiwan has accepted the obligations contained in the United Nations Charter and agrees to promote international peace and security. The fundamental right of the 21,000,000 people who comprise Taiwan to be partners in the community of nations should no longer be denied: Therefore,

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the Indiana State Senate supports the membership of the Republic of China on Taiwan in the United Nations and urges due consideration by the Congress of the United States.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to the President and Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, Indiana's Senators and Representatives in Congress, and the United Nations General Assembly.

The resolution was read in full and referred to the Committee on Homeland Security, Utilities, and Public Policy.

Senate Resolution 26

Senate Resolution 26, introduced by Senator Waterman:

A SENATE RESOLUTION commending the Republic of China on Taiwan on its contributions to promote world health.

Whereas, Good health is essential to every citizen of the world and access to the highest standards of health information and services is necessary to improve public health;

Whereas, The World Health Organization (WHO) set forth in the first chapter of its charter the objective of attaining the highest possible level of health for all people;

Whereas, The Republic of China on Taiwan's ("Taiwan") achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, and the eradication of such infectious diseases as cholera, smallpox, and the plague; moreover, it was the first Asian nation to eradicate polio and provide children with hepatitis B vaccinations;

Whereas, The United States Center for Disease Control and Prevention and its Taiwanese counterpart have enjoyed close collaboration on a wide range of public health issues;

Whereas, In recent years, Taiwan has expressed a willingness to assist financially and technically in international health activities supported by the WHO; and

Whereas, Direct, unobstructed participation in international health forums and programs is critical to limit the spread of various infectious diseases and achieve world health: Therefore,

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the Indiana Senate commends the efforts of the Republic of China on Taiwan in support of world health and extends its support for the Republic of China on Taiwan's participation in the World Health Organization.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to the governing authority of the World Health Organization and to the Taipei Economic and Cultural Office in Chicago, Illinois.

The resolution was read in full and referred to the Committee on Health and Provider Services.

Senate Resolution 27

Senate Resolution 27, introduced by Senator Waterman:

A SENATE RESOLUTION supporting a free trade agreement between the Republic of China on Taiwan and the United States.

Whereas, The Republic of China on Taiwan ("Taiwan") and the United States enjoy one of the most important economic and strategic international relationships that exist today;

Whereas, Together, Taiwan and the United States promote a shared belief in freedom, democracy, and market principles;

Whereas, The level of mutual investment between Taiwan and the United States is quite high;

Whereas, Streamlined foreign investment procedures developed under a free trade agreement between Taiwan and the United States would create new business opportunities and new jobs;

Whereas, A free trade agreement between Taiwan and the United States would encourage greater innovations and manufacturing efficiencies by stimulating joint technological development, practical applications, and new cooperative ventures;

Whereas, A recent study by the United States International Trade Commission supports the negotiation of a free trade agreement between Taiwan and the United States;

Whereas, A free trade agreement between Taiwan and the United States would build on the existing strong relations between Taiwan and the United States to simultaneously boost Taiwan's security and democracy and serve the broader interest of the United States in the Asia-Pacific region: Therefore,

*Be it resolved by the Senate of the
General Assembly of the State of Indiana:*

SECTION 1. That the Indiana Senate supports the negotiation of a free trade agreement between the Republic of China on Taiwan and the United States.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this Resolution to the Taipei Economic and Cultural Office in Chicago, Illinois.

The resolution was read in full and referred to the Committee on Commerce and Transportation.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Engrossed House Bill 1182, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-12.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. For purposes of this chapter:

(1) "Economic revitalization area" means an area which is within the corporate limits of a city, town, or county which has become undesirable for, or impossible of, normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property. The term "economic revitalization area" also includes:

(A) any area where a facility or a group of facilities that are technologically, economically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues; and

(B) a residentially distressed area, except as otherwise provided in this chapter.

(2) "City" means any city in this state, and "town" means any town incorporated under IC 36-5-1.

(3) "New manufacturing equipment" means any tangible personal property which:

(A) was installed after February 28, 1983, ~~and before January 1, 2006~~, in an area that is declared an economic revitalization area after February 28, 1983, in which a deduction for tangible personal property is allowed;

(B) is used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property, including but not limited to use to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products; and

(C) was acquired by its owner for use as described in clause (B) and was never before used by its owner for any purpose in Indiana.

However, notwithstanding any other law, the term includes tangible personal property that is used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products and was installed after March 1, 1993, and before March 2, 1996, even if the property was installed before the area where the property is located was designated as an economic revitalization area or the statement of benefits for the property was approved by the designating body.

(4) "Property" means a building or structure, but does not include land.

(5) "Redevelopment" means the construction of new structures, in economic revitalization areas, either:

(A) on unimproved real estate; or

(B) on real estate upon which a prior existing structure is demolished to allow for a new construction.

(6) "Rehabilitation" means the remodeling, repair, or betterment of property in any manner or any enlargement or extension of property.

(7) "Designating body" means the following:

(A) For a county that does not contain a consolidated city, the fiscal body of the county, city, or town.

(B) For a county containing a consolidated city, the metropolitan development commission.

(8) "Deduction application" means either:

(A) the application filed in accordance with section 5 of this chapter by a property owner who desires to obtain the deduction provided by section 3 of this chapter; or

(B) the application filed in accordance with ~~section 5.5~~ **section 5.4** of this chapter by a person who desires to obtain the deduction provided by section 4.5 of this chapter.

(9) "Designation application" means an application that is filed with a designating body to assist that body in making a determination about whether a particular area should be designated as an economic revitalization area.

(10) "Hazardous waste" has the meaning set forth in IC 13-11-2-99(a). The term includes waste determined to be a hazardous waste under IC 13-22-2-3(b).

(11) "Solid waste" has the meaning set forth in IC 13-11-2-205(a). However, the term does not include dead animals or any animal solid or semisolid wastes.

(12) "New research and development equipment" means tangible personal property that:

(A) is installed after June 30, 2000, ~~and before January 1, 2006~~, in an economic revitalization area in which a deduction for tangible personal property is allowed;

(B) consists of:

(i) laboratory equipment;

(ii) research and development equipment;

(iii) computers and computer software;

(iv) telecommunications equipment; or

(v) testing equipment;

(C) is used in research and development activities devoted directly and exclusively to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products; and

(D) is acquired by the property owner for purposes described in this subdivision and was never before used by the owner for any purpose in Indiana.

The term does not include equipment installed in facilities used for or in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising or promotion, or research in connection with literacy, history, or similar projects.

(13) "New logistical distribution equipment" means tangible personal property that:

(A) is installed after June 30, 2004, ~~and before January 1, 2006~~, in an economic revitalization area

~~(i) in which a deduction for tangible personal property is allowed. and~~

~~(ii) located in a county referred to in section 2-3 of this chapter, subject to section 2-3(c) of this chapter;~~

(B) consists of:

- (i) racking equipment;
- (ii) scanning or coding equipment;
- (iii) separators;
- (iv) conveyors;
- (v) fork lifts or lifting equipment (including "walk behinds");
- (vi) transitional moving equipment;
- (vii) packaging equipment;
- (viii) sorting and picking equipment; or
- (ix) software for technology used in logistical distribution;

(C) is used for the storage or distribution of goods, services, or information; and

(D) before being used as described in clause (C), was never used by its owner for any purpose in Indiana.

(14) "New information technology equipment" means tangible personal property that:

(A) is installed after June 30, 2004, ~~and before January 1, 2006~~, in an economic revitalization area

~~(i) in which a deduction for tangible personal property is allowed. and~~

~~(ii) located in a county referred to in section 2-3 of this chapter, subject to section 2-3(c) of this chapter;~~

(B) consists of equipment, including software, used in the fields of:

- (i) information processing;
- (ii) office automation;
- (iii) telecommunication facilities and networks;
- (iv) informatics;
- (v) network administration;
- (vi) software development; and
- (vii) fiber optics; and

(C) before being installed as described in clause (A), was never used by its owner for any purpose in Indiana.

SECTION 2. IC 6-1.1-12.1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A designating body may find that a particular area within its jurisdiction is an economic revitalization area. However, the deduction provided by this chapter for economic revitalization areas not within a city or town shall not be available to retail businesses.

(b) In a county containing a consolidated city or within a city or town, a designating body may find that a particular area within its jurisdiction is a residentially distressed area. Designation of an area as a residentially distressed area has the same effect as designating an area as an economic revitalization area, except that the amount of the deduction shall be calculated as specified in section 4.1 of this chapter and the deduction is allowed for not more than five (5) years. In order to declare a particular area a residentially distressed area, the designating body must follow the same procedure that is required to designate an area as an economic revitalization area and must make all the following additional findings or all the additional findings described in subsection (c):

(1) The area is comprised of parcels that are either unimproved or contain only one (1) or two (2) family dwellings or multifamily dwellings designed for up to four (4) families, including accessory buildings for those dwellings.

(2) Any dwellings in the area are not permanently occupied and are:

(A) the subject of an order issued under IC 36-7-9; or

(B) evidencing significant building deficiencies.

(3) Parcels of property in the area:

(A) have been sold and not redeemed under IC 6-1.1-24 and IC 6-1.1-25; or

(B) are owned by a unit of local government.

However, in a city in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the designating body is only required to make one (1) of the additional findings described in this subsection or one (1) of the additional findings described in subsection (c).

(c) In a county containing a consolidated city or within a city or town, a designating body that wishes to designate a particular area a residentially distressed area may make the following additional findings as an alternative to the additional findings described in subsection (b):

(1) A significant number of dwelling units within the area are not permanently occupied or a significant number of parcels in the area are vacant land.

(2) A significant number of dwelling units within the area are:

(A) the subject of an order issued under IC 36-7-9; or

(B) evidencing significant building deficiencies.

(3) The area has experienced a net loss in the number of dwelling units, as documented by census information, local building and demolition permits, or certificates of occupancy, or the area is owned by Indiana or the United States.

(4) The area (plus any areas previously designated under this subsection) will not exceed ten percent (10%) of the total area within the designating body's jurisdiction.

However, in a city in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the designating body is only required to make one (1) of the additional findings described in this subsection as an alternative to one (1) of the additional findings described in subsection (b).

(d) A designating body is required to attach the following conditions to the grant of a residentially distressed area designation:

(1) The deduction will not be allowed unless the dwelling is rehabilitated to meet local code standards for habitability.

(2) If a designation application is filed, the designating body may require that the redevelopment or rehabilitation be

completed within a reasonable period of time.

(e) To make a designation described in subsection (a) or (b), the designating body shall use procedures prescribed in section 2.5 of this chapter.

(f) The property tax deductions provided by sections 3 and 4.5 of this chapter are only available within an area which the designating body finds to be an economic revitalization area.

(g) The designating body may adopt a resolution establishing general standards to be used, along with the requirements set forth in the definition of economic revitalization area, by the designating body in finding an area to be an economic revitalization area. The standards must have a reasonable relationship to the development objectives of the area in which the designating body has jurisdiction. The following three (3) sets of standards may be established:

(1) One (1) relative to the deduction under section 3 of this chapter for economic revitalization areas that are not residentially distressed areas.

(2) One (1) relative to the deduction under section 3 of this chapter for residentially distressed areas.

(3) One (1) relative to the deduction allowed under section 4.5 of this chapter.

(h) A designating body may impose a fee for filing a designation application for a person requesting the designation of a particular area as an economic revitalization area. The fee may be sufficient to defray actual processing and administrative costs. However, the fee charged for filing a designation application for a parcel that contains one (1) or more owner-occupied, single-family dwellings may not exceed the cost of publishing the required notice.

(i) In declaring an area an economic revitalization area, the designating body may:

(1) limit the time period to a certain number of calendar years during which the **economic revitalization** area shall be so designated;

(2) limit the type of deductions that will be allowed within the economic revitalization area to either the deduction allowed under section 3 of this chapter or the deduction allowed under section 4.5 of this chapter;

(3) limit the dollar amount of the deduction that will be allowed with respect to new manufacturing equipment, new research and development equipment, new logistical distribution equipment, and new information technology equipment if a deduction under this chapter had not been filed before July 1, 1987, for that equipment;

(4) limit the dollar amount of the deduction that will be allowed with respect to redevelopment and rehabilitation occurring in areas that are designated as economic revitalization areas on or after September 1, 1988; or

(5) impose reasonable conditions related to the purpose of this chapter or to the general standards adopted under subsection (g) for allowing the deduction for the redevelopment or rehabilitation of the property or the installation of the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment.

To exercise one (1) or more of these powers, a designating body must include this fact in the resolution passed under section 2.5 of this chapter.

(j) Notwithstanding any other provision of this chapter, if a designating body limits the time period during which an area is an economic revitalization area, that limitation does not:

(1) prevent a taxpayer from obtaining a deduction for new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment installed ~~before January 1, 2006, but~~ after the expiration of the economic revitalization area if:

(A) the economic revitalization area designation expires after December 30, 1995; and

(B) the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment was described in a statement of benefits submitted to and approved by the designating body in accordance with section 4.5 of this chapter before the expiration of the economic revitalization area designation; or

(2) limit the length of time a taxpayer is entitled to receive a deduction to a number of years that is less than the number of years designated under section 4 or 4.5 of this chapter.

(k) Notwithstanding any other provision of this chapter, deductions:

(1) that are authorized under section 3 of this chapter for property in an area designated as an urban development area before March 1, 1983, and that are based on an increase in assessed valuation resulting from redevelopment or rehabilitation that occurs before March 1, 1983; or

(2) that are authorized under section 4.5 of this chapter for new manufacturing equipment installed in an area designated as an urban development area before March 1, 1983;

apply according to the provisions of this chapter as they existed at the time that an application for the deduction was first made. No deduction that is based on the location of property or new manufacturing equipment in an urban development area is authorized under this chapter after February 28, 1983, unless the initial increase in assessed value resulting from the redevelopment or rehabilitation of the property or the installation of the new manufacturing equipment occurred before March 1, 1983.

(l) If property located in an economic revitalization area is also located in an allocation area (as defined in IC 36-7-14-39 or IC 36-7-15.1-26), an application for the property tax deduction provided by this chapter may not be approved unless the commission that designated the allocation area adopts a resolution approving the application.

SECTION 3. IC 6-1.1-12.1-5.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.6. (a) This subsection applies to a property owner whose statement of benefits was approved under section 4.5 of this chapter before July 1, 1991. In addition to the requirements of ~~section 5.5(b)~~ **section 5.4(b)** of this chapter, a deduction application filed under ~~section 5.5~~ **section 5.4** of this chapter must contain information showing the extent to which there has been compliance with the statement of benefits approved under section 4.5 of this chapter. Failure to comply with a statement of benefits approved before July 1, 1991, may not be a basis for rejecting a deduction application.

(b) This subsection applies to a property owner whose statement of benefits was approved under section 4.5 of this chapter after June

30, 1991. In addition to the requirements of ~~section 5.5(b)~~ **section 5.4(b)** of this chapter, a property owner who files a deduction application under ~~section 5.5~~ **section 5.4** of this chapter must provide the county auditor and the designating body with information showing the extent to which there has been compliance with the statement of benefits approved under section 4.5 of this chapter.

(c) Notwithstanding IC 5-14-3 and IC 6-1.1-35-9, the following information is a public record if filed under this section:

- (1) The name and address of the taxpayer.
- (2) The location and description of the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment for which the deduction was granted.
- (3) Any information concerning the number of employees at the facility where the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment is located, including estimated totals that were provided as part of the statement of benefits.
- (4) Any information concerning the total of the salaries paid to those employees, including estimated totals that were provided as part of the statement of benefits.
- (5) Any information concerning the amount of solid waste or hazardous waste converted into energy or other useful products by the new manufacturing equipment.
- (6) Any information concerning the assessed value of the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment including estimates that were provided as part of the statement of benefits.

(d) The following information is confidential if filed under this section:

- (1) Any information concerning the specific salaries paid to individual employees by the owner of the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment.
- (2) Any information concerning the cost of the new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment."

Page 2, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 5. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Chapter 29. State New Markets Tax Credit

Sec. 1. As used in this chapter, "applicable percentage" means the following:

- (1) One percent (1%) for the first three (3) credit allowance dates.
- (2) Two percent (2%) for the remainder of the credit allowance dates.

Sec. 2. As used in this chapter, "certified equity investment" refers to a qualified equity investment certified under this chapter for a tax credit.

Sec. 3. As used in this chapter, "credit" refers to a state new markets tax credit granted under this chapter against state tax liability.

Sec. 4. As used in this chapter, "credit allowance date" means the following with respect to any certified equity investment:

- (1) The date on which the certified equity investment is initially made.
- (2) Each of the six (6) annual anniversary dates immediately following the date described in subdivision (1).

Sec. 5. As used in this chapter, "holder", with respect to a credit allowance date, refers to one (1) of the following:

- (1) The taxpayer or pass through entity that makes the original qualified equity investment, if the taxpayer or pass through entity owns the qualified equity investment on a credit allowance date.
- (2) A subsequent taxpayer or pass through entity that owns the qualified equity investment on a credit allowance date.

Sec. 6. As used in this chapter, "pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or
- (5) limited liability partnership.

Sec. 7. As used in this chapter, "qualified equity investment" has the meaning set forth in Section 45D of the Internal Revenue Code.

Sec. 8. As used in this chapter, "qualified low-income community investments" has the meaning set forth in Section 45D of the Internal Revenue Code.

Sec. 9. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 10. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has any state tax liability.

Sec. 11. Subject to this chapter, a taxpayer that:

- (1) holds a certified equity investment on a credit allowance date; and
- (2) does not receive another credit under this article for the same certified equity investment;

is entitled to a state new markets tax credit in the taxable year in which the credit allowance date occurs against the taxpayer's state tax liability for the taxable year.

Sec. 12. The amount of the credit in a taxable year is equal to the amount determined under STEP THREE of the following formula:

STEP ONE: Determine the amount of the qualified equity investment that is:

- (A) held by the taxpayer on the credit allowance date in the taxable year; and
- (B) certified under this chapter as a certified equity investment.

STEP TWO: Multiply the STEP ONE amount by the applicable percentage for the credit allowance date.

STEP THREE: Multiply the STEP TWO amount by:

- (A) the tax credit adjustment factor approved by the department of tourism and community development established by P.L.224-2003 under this chapter; or
- (B) eighty-five hundredths (0.85), if clause (A) does not apply.

Sec. 13. (a) If:

- (1) a pass through entity does not have state income tax liability against which the tax credit provided by this chapter may be applied; and
- (2) the pass through entity would be eligible for a tax credit under this chapter if the pass through entity were a taxpayer;

a shareholder, partner, or member of the pass through entity is entitled to a tax credit under this chapter.

(b) Subject to this chapter, the amount of the tax credit to which a shareholder, partner, or member of a pass through entity is entitled is equal to:

- (1) the tax credit determined for the pass through entity for the taxable year as if the pass through entity were a taxpayer with state tax liability in the amount of the tax credit; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 14. (a) If the amount of the tax credit provided under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to not more than three (3) subsequent taxable years. The amount of the tax credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a tax credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of any unused tax credit.

Sec. 15. (a) To receive the tax credit for a qualified investment under this chapter, a taxpayer or a pass through entity must:

- (1) make a qualified equity investment; and
- (2) be certified by the department of tourism and community development to receive a tax credit for the qualified equity investment.

(b) The department of tourism and community development shall establish a program to certify qualified equity investments as eligible for a tax credit.

(c) The amount of tax credits allowed under this chapter in a state fiscal year may not exceed the following amounts for the indicated fiscal years:

FISCAL YEAR	AMOUNT
2005	\$870,000
2006	\$870,000
2007	\$870,000
2008	\$1,740,000
2009	\$1,740,000
2010	\$1,740,000
2011	\$1,740,000

(d) Applicants for a tax credit that:

- (1) make a qualified equity investment;
- (2) are eligible to receive a federal tax credit under Section 45D of the Internal Revenue Code for the qualified equity investment; and
- (3) apply to the department of tourism and community development in the manner and on the form prescribed by the department of tourism and community development;

shall be certified for a tax credit in the amount of each applicant's qualified equity investment in the order in which the applicants apply to the department of tourism and community development for tax credits until the maximum amount of tax credits allowed under this section for a state fiscal year has been allocated among qualifying applicants. However, the department of tourism and community development may provide a procedure for an applicant denied a tax credit solely as a result of the cap imposed by this subsection to be given priority in the award of a tax credit in a subsequent state fiscal year.

(e) The certification of a tax credit under this section applies only to credit allowance dates that occur after the certification is made.

(f) If the state new markets tax credits allocated to the taxpayer or pass through entity are disallowed or recaptured under this chapter, the department of tourism and community development may reallocate the unused tax credits to another qualified applicant in the order in which qualifying applications are filed with the department of tourism and community development.

(g) The department of tourism and community development shall notify an applicant by letter of the certification of a tax credit under this section.

Sec. 16. (a) A taxpayer or pass through entity that holds a certified equity investment may apply to the department of tourism and community development to establish the tax credit adjustment factor that applies to the taxpayer or pass through entity.

(b) The department of tourism and community development shall establish a program to approve tax credit adjustment factors under this section for qualifying applicants. The department of tourism and community development may provide a procedure for combining an application for a tax credit for a qualified investment under section 15 of this chapter with an application for a tax credit adjustment factor under this section.

(c) If the applicant applies for the tax credit adjustment factor in the manner and on the form prescribed by the department of tourism and community development, the department of tourism and community development shall

approve a tax credit adjustment factor for the applicant that is equal to the percentage of the total gross assets of the entity in which the certified equity investment was made that the department of tourism and community development determines are invested by the entity in qualified low income community investments.

(d) An approval granted under this section applies to the taxable years specified by the department of tourism and community development.

Sec. 17. To receive the tax credit under this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. A taxpayer claiming a credit under this chapter shall submit to the department a copy of the certification letter issued by the department of tourism and community development under section 15 of this chapter and any state new markets tax credit adjustment approval letter provided under this chapter. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the tax credit.

Sec. 18. (a) The holder of a certified equity investment shall notify the department and the department of tourism and community development if the federal tax credit granted for the certified equity investment under Section 45D of the Internal Revenue Code is disallowed or otherwise recaptured under Section 45D of the Internal Revenue Code.

(b) If the federal tax credit is disallowed or otherwise recaptured, the department or the department of tourism and community development may:

- (1) disallow the use of a part of the unused tax credits;
- (2) recapture a part of the tax credit that has been applied to the state tax liability of a taxpayer; or
- (3) both disallow under subdivision (1) and recapture under subdivision (2).

The percentage of the tax credit that may be disallowed and recaptured under this subsection is equal to the percentage of the total federal credit that is disallowed or otherwise recaptured under Section 45D of the Internal Revenue Code.

Sec. 19. The department or the department of tourism and community development, or both, may adopt rules under IC 4-22-2 necessary to carry out the purposes of this chapter, including rules to facilitate the transfer of credits earned under this chapter."

Page 18, after line 27, begin a new paragraph and insert:

"SECTION 9. IC 36-12-7-8, AS ADDED BY HEA 1288-2005, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) ~~For~~ As used in this section:

- (1) "county fiscal body" means the fiscal body of a county in which a private donation library is located;
- (2) "library board" means a library board established under IC 20-14 in a county in which a private donation library is located; and
- (3) "private donation library" means a public library: established:

- (1) established by private donation;
- (2) located in a city having a population of more than

one hundred twenty thousand (120,000) but less than one hundred fifty thousand (150,000);

(3) (C) that contains at least twenty-five thousand (25,000) volumes;

(4) (D) that has real property valued at at least one hundred thousand dollars (\$100,000); and

(5) (E) that is open and free to the residents of the city.

a tax shall be levied and collected annually by the city according to IC 6-1-1.

(b) The city legislative body library board shall:

(1) levy the a tax required under subsection (a) IC 6-1-1 in an amount not less than sixty-seven hundredths of one cent (\$0.0067) and not more than one and sixty-seven hundredths cents (\$0.0167) on each one hundred dollars (\$100) of the assessed valuation of all the real and personal property in the city. When the city levies the tax, the library under subsection (a) shall be treated as if the library were a public library for purposes of IC 6-1-1-18.5-13, and the legislative body may increase the legislative body's levy to the same extent as a public library under IC 6-1-1-18.5-13; county;

(2) keep the tax levied under subdivision (1) separate from all other funds of the library board; and

(3) use the tax levied under subdivision (1):

(A) if the membership of the trustees of the private donation library includes at least one (1) member or appointee of the library board and at least one (1) appointee of the county fiscal body, for distributions of the full amounts of the tax received to the trustees of the private donation library at the time the tax is received by the library board; or

(B) if the membership of the trustees of the private donation library does not include at least one (1) member or appointee of the library board and at least one (1) appointee of the county fiscal body, at the discretion of the library board for:

(i) library board purposes; or

(ii) quarterly distributions to the trustees of the private donation library.

(c) The trustees of the private donation library shall annually submit a budget to the library board for review.

(d) The tax shall be paid to the trustees of the private donation library. The trustees shall expend the tax amounts received under subsection (b)(3)(A) or (b)(3)(B)(ii) for the support, operation, and maintenance of the private donation library. The trustees shall:

(1) keep the tax money separate from all other funds; The trustees shall

(2) record:

(1) the amount of taxes money received;

(2) to whom and when the money is paid out; and

(3) for what purpose the money is used;

in a book kept by the trustees; The trustees shall and

(3) make an annual report of the matters under this subsection referred to in subdivision (2) to the legislative body of the city library board.

(e) For purposes of the property tax levy limits under IC 6-1-1-18.5, the tax levied by the library board under subsection (b)(1) is not included in the calculation of the

maximum permissible property tax levy for the public library.

SECTION 10. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 6-1.1-12.1-2.3; IC 6-1.1-12.1-9.

SECTION 11. [EFFECTIVE JULY 1, 2005] **Notwithstanding the amendments to IC 6-1.1-12.1 made by this act, deductions that were approved under IC 6-1.1-12.1 before July 1, 2005, remain in effect after June 30, 2005, according to the provisions of IC 6-1.1-12.1 as they existed on June 30, 2005.**

SECTION 12. [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **The definitions in IC 6-3.1-29, as added by this act, apply throughout this SECTION. IC 6-3.1-29, as added by this act, applies only to:**

(1) qualified equity investments made; and

(2) taxable years beginning;

after December 31, 2004.

SECTION 13. [EFFECTIVE JULY 1, 2005] **IC 36-12-7-8, as amended by this act, applies only to property taxes first due and payable after December 31, 2005.**

SECTION 14. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1182 as printed January 14, 2005.)

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

Committee Vote: Yeas 8, Nays 0.

FORD, Chair

Report adopted.

COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Engrossed House Bill 1407, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, between lines 8 and 9, begin a new paragraph and insert: "SECTION 2. IC 3-5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. "Ballot card" refers to ~~either a punch card ballot or an optical scan ballot.~~

SECTION 3. IC 3-5-2-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. "Ballot card voting system" refers to ~~either a punch card voting system or an optical scan voting system."~~

Page 1, line 15, strike "booklet, pamphlet, or other".

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 5. IC 3-5-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. "Marking device" means:

~~(1) an apparatus in which paper ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter;~~

~~(2) (1) a pencil for marking a paper ballot or ballot card; or~~

~~(3) (2) an approved touch-sensitive device that automatically registers a vote on an electronic voting system.~~

SECTION 6. IC 3-5-2-48.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.5. "Testing authority" means an independent test authority ~~as described in: or independent laboratory:~~

~~(1) as described in the Voting System Standards issued by the Federal Election Commission on April 30, 2002; or~~

~~(2) other more recent voting systems standards adopted by the commission under IC 3-11-15-13.~~

(2) accredited under Section 231 of HAVA (42 U.S.C. 15371)."

Page 2, between lines 9 and 10, begin a new paragraph and insert: "SECTION 8. IC 3-6-4.2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. The election division shall do the following:

~~(1) Prepare and distribute paper ballots for the election or retention of persons to federal and state offices and for public questions in compliance with this title.~~

~~(2) (1) Maintain complete and uniform descriptions and maps of all precincts in Indiana.~~

~~(3) (2) Promptly update the information required by subdivision (2) (1) after each precinct establishment order is filed with the commission under IC 3-11-1.5.~~

~~(4) (3) Issue media watcher cards under IC 3-6-10-6.~~

~~(5) (4) Prepare and transfer to the department of state revenue voter registration affidavits for inclusion in state adjusted gross income tax booklets under IC 6-8.1-3-19.~~

~~(6) After December 31, 2003, (5) Serve in accordance with 42 U.S.C. 1973ff-1(b) as the office in Indiana responsible for providing information regarding voter registration procedures and absentee ballot procedures to absent uniformed services voters and overseas voters.~~

~~(7) (6) As required by 42 U.S.C. 1973ff-1(c), submit a report to the federal Election Assistance Commission not later than ninety (90) days after each general election setting forth the combined number of absentee ballots:~~

~~(A) transmitted to absent uniformed services voters and overseas voters for the election; and~~

~~(B) returned by absent uniformed services voters and overseas voters and cast in the election.~~

~~(8) (7) Implement the state plan in accordance with the requirements of HAVA (42 U.S.C. 15401 through 15406) and this title, and appoint members of the committee established under 42 U.S.C. 15405.~~

~~(9) (8) Submit reports required under 42 U.S.C. 15408 to the federal Election Assistance Commission concerning the use of federal funds under Title II, Subtitle D, Part I of HAVA.~~

SECTION 9. IC 3-6-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) Each county election board, in addition to duties otherwise prescribed by law, shall do the following:

(1) Adopt and amend a written plan to implement NVRA within the county.

(2) Conduct all elections and administer the election laws within the county, except as provided in IC 3-8-5 and IC 3-10-7 for town conventions and municipal elections in certain small towns.

(3) Prepare all ballots. ~~except those prepared by the election division.~~

(4) Distribute all ballots and pasters to all of the precincts in the county.

(b) This subsection does not apply to pasters to be attached to ballots during the final three (3) days before an election. Not later than the Monday before distributing ballots, pasters, and voting systems to the precincts in the county, the county election board shall notify the county chairman of each major political party and, upon request, the chairman of any other bona fide political party in the county, that sample ballots and pasters are available for inspection."

Page 2, line 11, after "34." insert "(a)".

Page 2, line 17, after "ballots." begin a new paragraph and insert: "(b)".

Page 13, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 32. IC 3-11-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~(a)~~ If, in the judgment of a county election board, the number of voters in a precinct of the county where a voting **machine system** is used for voting is so large that the **machine voting system** in use will not be sufficient to register the vote of all the voters in the precinct, the board may use paper ballots in addition to the **machine voting system**. The voting by paper ballot is subject to all the restrictions prescribed by this article.

~~(b) The county election board shall then notify the election division of the board's determination and of the estimated number of state and presidential ballots that will be required in the precinct."~~

Page 13, strike lines 30 through 32.

Page 13, line 33, strike "(2)" and insert "(1)".

Page 13, line 33, strike "local".

Page 13, line 36, strike "(3)" and insert "(2)".

Page 13, line 36, strike "local".

Page 14, line 5, strike "(4)" and insert "(3)".

Page 14, line 7, strike "(5)" and insert "(4)".

Page 14, line 9, strike "(6)" and insert "(5)".

Page 14, line 12, strike "subdivision (3)." and insert "**subdivision (2).**"

Page 14, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 34. IC 3-11-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The ~~total~~ ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the ballots. The ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready for the reception of votes.

(b) The ~~total~~ provisional ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, separate from the bag described in subsection (a), which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's

representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready to receive votes."

Page 15, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 38. IC 3-11-6.5-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6.1. (a) When approving applications for reimbursement for voting systems under this chapter, the budget agency shall give priority to approving applications to replace a punch card voting system or voting machine system.

(b) This section expires January 1, 2006.

SECTION 39. IC 3-11-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. ~~(a)~~ The commission must approve a ballot card voting system before it may be used in an election.

~~(b) After June 30, 2001, the commission may not approve a punch card voting system for use in an election.~~

SECTION 40. IC 3-11-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. A ballot card voting system must permit a voter to vote either:

(1) a straight party ticket for all of the candidates of a political party by a single mark ~~or punch~~ on each ballot card;

(2) a split ticket for the candidates of different political parties and for independent candidates; or

(3) a straight party ticket and then split that ticket by casting individual votes for candidates of another political party or independent candidate.

SECTION 41. IC 3-11-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The commission shall:

(1) **require the vendor to have tests conducted concerning the suitability compliance of a ballot card voting system with HAVA and the standards set forth in this chapter and IC 3-11-15; and**

(2) **have the results of the tests evaluated by the person designated under IC 3-11-16;**

before determining whether to approve the **application for certification of a ballot card voting system.**

(b) The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this section.

(c) Except as provided in subsection (d), a ballot card voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.

(d) This subsection applies to a ballot card voting system whose application for certification has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (c), a vendor may market a ballot card system described by this subsection if:

(1) the vendor files the application for certification with the election division before conducting any marketing of the system in Indiana; and

(2) all of the vendor's product information has a prominent and easily readable label that states that the ballot card voting system has not been approved by the commission for use in Indiana elections.

(e) An approval of a ballot card voting system under this chapter expires on the date specified in section 19(a) of this chapter.

SECTION 42. IC 3-11-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A vendor may apply for approval of a proposed improvement or change to a ballot card voting system ~~shall be reported to the election division by:~~

(1) the vendor, if a vendor is involved in the proposed change; and

(2) the county election board, if a county is proposing the change;

that is currently certified by the commission. Except as provided in subsection (b), a proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the application for the improvement or change is approved by the commission.

(b) This subsection applies to a ballot card voting system whose application for a proposed improvement or change has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (a), a vendor may market a ballot card voting system described by this subsection if:

(1) the vendor files the application with the election division before conducting any marketing of the system in Indiana; and

(2) all of the vendor's product information has a prominent and easily readable label that states that the proposed improvement or change to the ballot card voting system has not been approved by the commission for use in Indiana elections.

~~(b) A report of~~ (c) An application for approval of an improvement or change must be in the form prescribed by the commission.

(d) The vendor applying for approval of an improvement or a change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.

~~(c)~~ (e) The election division (or a competent the person designated by the commission to act on behalf of the election division under IC 3-11-16) shall review the proposed improvement or change to the voting system and report the results of the review to the commission. The commission shall determine, within a reasonable period of time, whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this chapter or the standards adopted by the commission under section 2 of this chapter. The review must indicate:

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this

chapter and IC 3-11-15.

~~(d)~~ (f) After the commission has approved the application for an improvement or change to a ballot card voting system, the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(g) An approval of an application under this section expires on the date specified under section 19(a) of this chapter.

SECTION 43. IC 3-11-7-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. The commission may not approve the marketing, sale, lease, installation, or implementation of a ballot card voting system by a vendor if the commission finds that the system fails to meet all statutory requirements.

SECTION 44. IC 3-11-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) The election division (or a competent the person designated by the commission to act on behalf of the election division under IC 3-11-16) may periodically examine a ballot card voting system that the commission has previously approved to determine if whether the system is still in compliance with all statutory requirements and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.

(b) If the election division or competent person finds that a system examined under does not comply with subsection (a), fails to meet all requirements and standards, and the commission concurs in these findings, the commission may by unanimous vote of all of the members of the commission, rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may by unanimous vote of all of the members of the commission:

(1) recommend that use of the system be discontinued; and
(2) prohibit the system from being installed, implemented, leased, marketed, used, permitted to be used, or sold for use in Indiana in an election conducted under this title.

(d) This subsection applies to a ballot card voting system approved for its initial certification before:

(1) March 25, 1992; or
(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.

The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

SECTION 45. IC 3-11-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) The commission may require a county executive to shall file a copy of all contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

(b) ~~The election division may advise or instruct county officials on the content of the documents listed in subsection (a) must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.~~

SECTION 46. IC 3-11-7-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) Except as provided in subsection (g), the approval of a ballot card voting system under this chapter expires ~~five (5) years after the date the commission approves the system.~~ **October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.**

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before ~~considering the commission considers~~ the application for renewal, the election division shall give notice ~~by regular United States mail~~ of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the commission shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

~~(e) The commission may, by unanimous consent of its entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(f) (e) After receiving the report under subsection (d) and receiving comments from interested persons, the commission shall approve an application for renewal under this section if the commission finds that the voting system:~~

- ~~(1) complies with the standards prescribed under this chapter;~~
- ~~(2) has worked effectively where the system has been used; and~~
- ~~(3) has been adequately supported by the vendor of the system.~~

~~(g) (f) This subsection does not apply to the marketing of a voting system performed in compliance with section 12(d) or 15(b) of this chapter.~~ If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

- ~~(1) has not been certified by the commission for use in Indiana; or~~
- ~~(2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;~~

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

~~(h) (g) A vendor subject to subsection (g) (f) may continue to provide support during the period specified in subsection (g) (f) to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.~~

SECTION 47. IC 3-11-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A person owning or interested in an electronic voting system may request the election division (or a competent person designated by the commission to act on behalf of the election division) to examine the **submit an application for approval of an electronic voting system and report on its accuracy, efficiency, and capacity: in the form prescribed by the commission.**

SECTION 48. IC 3-11-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The commission shall:

- (1) require the vendor to have tests conducted concerning the compliance of an electronic voting system with HAVA and the standards set forth in this chapter and IC 3-11-15; and**
- (2) have the results of the tests evaluated by the person designated under IC 3-11-16;**

before determining whether to approve the application for certification of an electronic voting system.

(b) The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses under this section.

(c) If the commission finds that an electronic voting system complies with this article, the commission may approve the system. The approved system then may be adopted for use at an election.

(d) **Except as provided in subsection (e), an electronic voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.**

(e) This subsection applies to an electronic voting system whose application for certification has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (d), a vendor may market an electronic voting system described by this subsection if:

- (1) the vendor files the application with the election division before conducting any marketing of the system in Indiana; and**
- (2) all of the vendor's product information has a prominent and easily readable label that states that the electronic voting system has not been approved by the commission for use in Indiana elections.**

(f) An approval of an electronic voting system under this chapter expires on the date specified by section 28(a) of this chapter.

SECTION 49. IC 3-11-7.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A vendor may **apply for approval of a proposed improvement or change to an electronic voting system** ~~shall be reported to the election division by:~~

- ~~(1) the vendor; if a vendor is involved in the proposed change; and~~
- ~~(2) the county election board; if a county is proposing the change;~~

that is currently certified by the commission. Except as provided in subsection (b), a proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the application for the improvement or change is

approved by the commission.

(b) **This subsection applies to an electronic voting system whose application for a proposed improvement or change has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (a), a vendor may market an electronic voting system described by this subsection if:**

(1) the vendor files the application with the election division before conducting any marketing of the system in Indiana; and

(2) all of the vendor's product information has a prominent and easily readable label that states that the proposed improvement or change to the electronic voting system has not been approved by the commission for use in Indiana elections.

~~(b)~~ **A report of (c) An application for approval of an improvement or a change must be in the form prescribed by the commission.**

(d) The vendor applying for approval of an improvement or a change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.

~~(e)~~ **(e) The election division (or a competent the person designated by the commission to act on behalf of the election division under IC 3-11-16) shall review the improvement or change to the voting system and report the results of the review to the commission. The commission shall determine within a reasonable period of time whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this article. The review must indicate:**

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

~~(d)~~ **(f) After the commission has examined and approved the application for an improvement or change to an electronic voting system, the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.**

(g) An approval of an application under this section expires on the date specified by section 28(a) of this chapter.

SECTION 50. IC 3-11-7.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The commission may not approve **the marketing, sale, lease, installation, or implementation** of an electronic voting system unless the system meets the specifications in sections 8 through 19 of this chapter and in IC 3-11-15.

SECTION 51. IC 3-11-7.5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. A county executive may ~~adopt and~~ purchase, or procure, **lease, install, implement, or authorize the use of** an electronic voting system only after the system has been approved by the commission.

SECTION 52. IC 3-11-7.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The election division (or ~~a competent the~~ person designated by the commission to act on behalf of the election division under

IC 3-11-16) may periodically examine an electronic voting system that the commission has previously approved to determine **if whether** that system is still in compliance with all statutory requirements **and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.**

~~(b) If the election division or competent person finds that a system examined under does not comply with subsection (a), fails to meet all requirements and standards; and the commission concurs in these findings; the commission may by unanimous vote of all of the members of the commission; rescind the commission's approval of the voting system.~~

~~(c) If the commission's approval is rescinded under subsection (b), the commission may by unanimous vote of all of the members of the commission:~~

~~(1) recommend that use of the system be discontinued; and~~

~~(2) prohibit the system from being installed, implemented, leased, marketed, used, permitted to be used, or sold for use in Indiana in an election conducted under this title.~~

~~(d) This subsection applies to an electronic voting system approved for its initial certification before:~~

~~(1) March 25, 1992; or~~

~~(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.~~

The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

~~(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article; the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.~~

SECTION 53. IC 3-11-7.5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) The ~~commission may require a~~ county executive **to shall** file a copy of all contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

~~(b) The election division may advise or instruct county officials on the content of the documents listed in subsection (a) must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.~~

SECTION 54. IC 3-11-7.5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) Except as provided in subsection (g), the approval of an electronic voting system under this chapter expires **five (5) years after the date the commission approves the system. October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.**

~~(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.~~

~~(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before the commission considers the application for renewal, the election division shall give notice by regular United States mail of the~~

application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the election division shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

~~(e) The commission may, by unanimous consent of the commission's entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(f) (e) After receiving the report under subsection (d) and comments from interested persons, the commission shall approve an application for renewal under this section if the commission finds that the voting system:~~

- ~~(1) complies with the standards prescribed under this chapter;~~
- ~~(2) has worked effectively where the system has been used; and~~
- ~~(3) has been adequately supported by the vendor of the system.~~

~~(g) (f) This subsection does not apply to the marketing of a voting system performed in compliance with section 4(e) or 5(b) of this chapter.~~ If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

- ~~(1) has not been certified by the commission for use in Indiana; or~~
- ~~(2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;~~

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

~~(h) (g) A vendor subject to subsection (g) subsection (f) may continue to provide support during the period specified in subsection (g) subsection (f) to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana."~~

Page 18, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 60. IC 3-11-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Before an election at which a ballot card voting system is used, a county election board shall:

- (1) have the marking devices prepared for the election;
- (2) have the marking devices put in order, set and adjusted, and made ready for voting when delivered to the precincts; and
- (3) provide the precinct election officers with marking devices, a demonstration marking device, ~~(except in precincts using optical scan ballots);~~ ballot cards, ballot boxes, ballot labels, and other records and supplies as required.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

(c) Each county election board shall have each ballot card voting system, along with all necessary furniture and appliances that go

with the system at the polls, delivered to the appropriate precinct not later than 6 p.m. of the day before election day. The county executive shall provide transportation for the systems if requested to do so by the county election board.

SECTION 61. IC 3-11-13-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. In partisan elections, the ballot labels must include a voting square or position where a voter may by one (1) mark ~~or punch~~ on each card record a straight party or an independent ticket vote for all the candidates of one (1) political party or the independent ticket, except for offices for which the voter has voted individually for a candidate. If the voter records a vote for the two (2) candidates comprising an independent ticket, the vote must not count for any other independent candidate on the ballot.

SECTION 62. IC 3-11-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. ~~(a) This subsection does not apply to an optical scan voting system and expires January 1, 2006. Each ballot card provided under section 17 of this chapter must have two (2) attached perforated stubs on which is printed the same serial number. The top stub shall be bound or stapled in the package of ballot cards retained by the precinct election officers. The following information must be printed on the second stub:~~

- ~~(1) The name of the political subdivision holding the election;~~
- ~~(2) The designation of the election;~~
- ~~(3) The date of the election;~~
- ~~(4) The instructions to the voters;~~
- ~~(5) In a primary election, the name of the political party;~~

~~(b) (a) The county election board in a county using a ballot card voting system shall provide ballot cards to the precinct election board that permit voters to cast write-in votes for each officer to be voted for at that election.~~

~~(c) (b) The ballot cards provided under subsection (b) subsection (a) must be:~~

- ~~(1) designed to be folded; or~~
- ~~(2) accompanied by a secrecy envelope;~~

to ensure the secrecy of each of the votes cast by a voter.

~~(d) (c) This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. Except as provided in subsection (c); (d), a write-in vote shall be cast by printing the name of the candidate and the title of the office in the space provided for write-in votes on a ballot card or secrecy envelope.~~

~~(e) (d) Space for write-in voting for an office is not required if there are no declared write-in candidates for that office. However, procedures must be implemented to permit write-in voting for candidates for federal offices.~~

SECTION 63. IC 3-11-13-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. The test required by section 22 of this chapter must:

- ~~(1) include the visual inspection of the voting devices for the correct alignment of the card stock and the templates for proper punching;~~
- ~~(2) (1) be conducted by processing a preaudited group of ballot cards punched or marked so as to record a predetermined number of valid votes for each candidate and on each public question; and~~

~~(3)~~ (2) include for each office one (1) or more ballot cards that have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating machines to reject the votes."

Page 18, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 65. IC 3-11-13-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) After the delivery of a ballot card voting system to a precinct, the precinct election board may meet at the polls on the same day and open the package containing the sample ballot cards, to determine whether the system is ready for use in accordance with section 16 of this chapter. If a ballot card voting system is not in compliance with that section, the board shall immediately label, set and adjust, and place the system in order or have it done.

(b) While acting under subsection (a), the precinct election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

(c) On the morning of election day, the precinct election officers shall meet at the polls at least one (1) hour before the time for opening the polls. The inspector then shall have:

- (1) the chute erected;
- (2) the sample ballots and instruction cards posted; and
- (3) everything put in readiness for the commencement of voting at the opening of the polls.

(d) Before the opening of the polls, the precinct election officers shall **do the following**:

- (1) Compare the ballot cards used in the marking device with the sample ballots furnished and determine whether the names, numbers, and letters are in agreement.
- (2) **Determine that the system records that zero (0) votes have been cast for each candidate and on each public question.**
- (3) **Assure that the system is otherwise in perfect order.**

(e) The officers then shall certify that:

- (1) the marking device and the sample ballots are in agreement;
- (2) **the system records zero (0) votes cast; and**
- (3) **the system appears to be in perfect order.**

Forms shall be provided for certification, and the certification shall be filed with the election returns.

SECTION 66. IC 3-11-13-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) Unless challenged, a voter may proceed to vote.

~~(b) This subsection does not apply to an optical scan voting system. After a voter has signed the poll list, the poll clerk holding the ballot card shall remove the top stub, as described in section 18 of this chapter, and deliver to the voter one (1) of each ballot card that the voter is entitled to vote at the election. The top stub (and any second stub declined by the voter under section 33 of this chapter) shall be retained by the precinct election board and returned to the election board following the close of the polls.~~

~~(c) (b)~~ As each successive voter calls for a ballot, the poll clerks shall deliver to the voter the first initialed ballot of each type. The inspector shall then deliver to the poll clerks another ballot of each type, which the clerks shall initial as before.

~~(d) (c)~~ This subsection applies after December 31, 2005, to an optical scan ballot card ballot tabulated at a central location. As provided by 42 U.S.C. 15481, when a voter receives an optical scan

ballot card ballot, the board must also provide the voter with:

- (1) information concerning the effect of casting multiple votes for an office; and
- (2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

SECTION 67. IC 3-11-13-28.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.7. (a) The two (2) poll clerks of each precinct shall place their initials in ink on the secrecy envelope of a ballot card (or on the fold-over part of a ballot card described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter) at the time the card is issued to a voter. The initials must be in the poll clerk's ordinary handwriting or printing and without a distinguishing mark of any kind.

(b) This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. A write-in vote cast on a secrecy envelope or fold-over envelope:

(1) is not valid unless:

- (A) the secrecy envelope is initialed by both poll clerks; and
 - (B) the vote includes both the name of the write-in candidate and the office for which the write-in vote is cast; and
- (2) makes the secrecy envelope or fold-over envelope a ballot for purposes of this title.

SECTION 68. IC 3-11-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) In addition to the instructions printed on the ballot card or ballot labels, instructions to voters shall be posted in each voting booth or placed on the marking device. Each voter shall be instructed by both judges, on request, on how to operate the voting device before the voter enters the voting booth.

(b) The instructions posted in the voting booth or placed on the marking device must state the following:

- (1) That the voter should examine the ballot card to determine if it contains the initials of the poll clerks in ink on the back of the card.
- (2) That the voter should not make an unnecessary mark ~~or punch~~ on the ballot card because the mark ~~or punch~~ may void the card.
- (3) That the voter should examine the ballot card to determine if the card has any mark (other than the initials of the poll clerks) before voting.
- (4) That the voter should return the ballot card to the poll clerks and request another ballot card if:

(A) the poll clerks' initials have not been properly placed on the card;

(B) the card has a mark (other than the initials of the poll clerks) before the voter places a voting mark on the ballot; or

(C) the voter has improperly marked ~~or punched~~ the card.

(5) That the voter should examine the ballot card after voting to determine that all marks ~~or punches~~ made on the card to indicate the voter's selections have been completely marked. ~~or punched~~:

(c) This subsection applies after December 31, 2005. As provided by 42 U.S.C. 15481, a voter casting an optical scan ballot card under this section must be:

- (1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 69. IC 3-11-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. When a voter is handed a ballot card, the voter shall be instructed to:

(1) use only the marking device provided for ~~punching, slotting, or~~ marking the cards and that the voter is not to mark a card in any other way;

(2) be certain that the initials of the poll clerks appear on the voter's card and that if the initials are not on the card it will not be counted, except as provided by IC 3-12-1-12; and

(3) place the voter's card in an envelope after the voter has voted or to fold the card in a manner so that no card is exposed upon which a choice is indicated.

SECTION 70. IC 3-11-13-31.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31.7. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system.

(b) After receiving ballot cards, a voter shall, without leaving the room, go alone into one (1) of the booths or compartments that is unoccupied and indicate:

(1) the candidates for whom the voter desires to vote by ~~punching a hole in or~~ marking the squares immediately beside the candidates' names; and

(2) the voter's preference on each public question by ~~punching a hole in or~~ marking the square beside the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group of petitioners, the voter may ~~punch a hole in or~~ mark the circle enclosing the device and beside the name under which the candidates of the party or group of petitioners are printed. The voter's vote shall then be counted for all the candidates under that name. However, if the voter ~~punches a hole in or~~ marks the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

SECTION 71. IC 3-11-13-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33. (a) After a voter has marked a ballot card, the voter shall place it inside the envelope provided for this purpose or fold the envelope described in section 18(c)(1) of this chapter and return the ballot card to the judge.

~~(b) This subsection does not apply to an optical scan ballot or to a ballot card with a fold-over envelope. The judge shall remove the second stub, as described in section 18 of this chapter, from the envelope and offer the second stub to the voter.~~

~~(e)~~ **(b)** The judge shall offer to return the envelope with the ballot card inside to the voter. The voter shall:

(1) accept the envelope and deposit it in the ballot box; or

(2) decline the envelope and require the judge to deposit it in the ballot box.

~~(d)~~ **(c)** If a voter offers to vote a ballot card that is not inside the envelope provided for this purpose or with the envelope not folded if the ballot is described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter, the precinct election board shall direct the voter to return to the booth and place the ballot card in the envelope provided for this purpose or fold the envelope.

~~(e)~~ **(d)** After a voter's ballot cards have been deposited in the ballot box, the poll clerks shall make a voting mark after the voter's name on the poll list.

~~(f)~~ **(e)** After voting, a voter shall leave the polls. However, a voter to whom ballot cards and a marking device have been delivered may not leave the polls without voting the ballot cards or returning them to the poll clerk from whom the voter received them.

SECTION 72. IC 3-11-13-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. ~~(a)~~ If a voter spoils or defaces a ballot card or marks it erroneously, the voter shall return the card so as not to disclose any choices that the voter has made.

~~(b) This subsection does not apply to an optical scan ballot. A voter returning a ballot must comply with subsection (a) by folding the stub on the ballot card.~~

~~(c) After complying with subsection (b), the voter then may receive another ballot card. Upon receipt of a defective ballot card, the precinct election board shall:~~

~~(1) immediately cancel the defective card by writing on the back of the card and stub the word "VOID" in ink or in indelible pencil; and~~

~~(2) without detaching any stub attached to the card, place the card in the container for voided ballots in a manner that does not expose the choices of the voter.~~

SECTION 73. IC 3-11-14-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Before an electronic voting system is delivered to a precinct, the county election board shall have the system put in order, set and adjusted, and ready for use in voting. **As part of the system's preparation, the county election board may conduct any of the comparisons and determinations required under section 17 of the chapter. However, notwithstanding any action taken by the county election board, each precinct election board must also perform the comparisons and determinations required under section 17 of this chapter before the opening of the polls.** The board may employ one (1) or more competent persons to prepare systems in accordance with this section.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where voting systems and other election material are being handled to safeguard this material.

SECTION 74. IC 3-11-14-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an electronic voting system.

(b) If a voter is not challenged by a member of the precinct election board, the voter may pass the railing to the side where an electronic voting system is and into the voting booth. There the voter shall register the voter's vote in secret by indicating:

(1) the candidates for whom the voter desires to vote by touching a device on or in the squares immediately above the candidates' names;

(2) if the voter intends to cast a write-in vote, a write-in vote by touching a device on or in the square immediately below the candidates' names and printing the name of the candidate in the window provided for write-in voting; and

(3) the voter's preference on each public question by touching a device above the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group of petitioners, the voter may cast a straight party ticket by touching that party's device. The voter's vote shall then be counted for all the candidates under that name. However, if the voter casts a vote by touching the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

(d) **This subsection applies after December 31, 2005.** As provided by 42 U.S.C. 15481, a voter casting a ballot on an electronic voting system must be:

(1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 75. IC 3-11-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 14.5. Public Tests of Electronic Voting Systems

Sec. 1. At least fourteen (14) days before election day, the county election board of each county planning to use an electronic voting system at the next election shall randomly select at least three (3) precincts within the county and test the voting system units to be used at those precincts on election day. Each voting system shall be tested to ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct.

Sec. 2. Public notice of the time and place shall be given at least forty-eight (48) hours before the test. The notice shall be published once in accordance with IC 5-3-1-4.

Sec. 3. The two (2) appointed members of the county election board shall observe the test required by this chapter and, if they so determine, shall certify the test as meeting the requirements of this chapter.

Sec. 4. The test must be open to representatives of political parties, candidates, the media, and the public.

Sec. 5. The test required by this chapter must include the following:

(1) The visual inspection of the voting system and ballot labels.

(2) The manual entry of a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question.

(3) At least one (1) ballot for each office that has votes in excess of the number allowed by law in order to test the ability of the electronic voting system to reject the overvotes.

Sec. 6. If an error is detected during the test required by section 5 of this chapter, the cause of the error shall be determined and corrected, and an errorless count must be made before the use of the electronic voting system at the election is approved.

Sec. 7. After completion of the count, the voting system shall be sealed. The ballots used to conduct the test and all other election materials shall be sealed, retained, and disposed of as provided for paper ballots.

Sec. 8. Immediately following the completion of the voting system test under section 5 of this chapter, the county election board shall enter the vote totals from the voting systems tested under this chapter into the component of the voting system used by the county election board to tabulate election results under IC 3-12-3.5. The board shall determine whether this component of the voting system properly tabulates the votes cast in each of the precincts tested under this chapter.

Sec. 9. Not later than seven (7) days after conducting the tests required under this chapter, the county election board shall certify to the election division that the tests have been conducted in conformity with this chapter.

Sec. 10. A copy of the certification of the tests conducted under this chapter shall be filed with the election returns.

SECTION 76. IC 3-11-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The performance and test standards and fees under this chapter apply to ~~a~~ **an optical scan voting system or an electronic voting system procured after March 25, 1992; described in IC 3-11-7 or IC 3-11-7.5.**

SECTION 77. IC 3-11-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. The commission shall not approve any system until the fee and the expenses incurred by the election division (or ~~a competent~~ **the person designated by the commission to act on behalf of the election division under IC 3-11-16**) in making the examination are paid by the person making the application.

SECTION 78. IC 3-11-15-13.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.3. (a) This section applies after December 31, 2005.

(b) To be approved by the commission for use in Indiana, a voting system must meet the Voting System Standards adopted by the Federal Election Commission on April 30, 2002.

(c) ~~The commission may adopt rules under IC 4-22-2 to require a voting system to meet standards more recent than standards described in subsection (b). If the commission adopts rules under this subsection, a voting system must meet the standards described in the rules instead of the standards described in subsection (b).~~

(c) A county may continue to use an optical scan ballot card voting system or an electronic voting system whose approval or certification expired on or before October 1, 2005, if the voting system:

(1) was:

(A) approved by the commission for use in elections in Indiana before July 1, 2003; and

(B) purchased by the county before July 1, 2003; and

(2) otherwise complies with the applicable provisions of HAVA and this article.

However, a voting system vendor may not market, sell, lease, or install a voting system described in this subsection.

(d) As provided by 42 U.S.C. 15481, to be used in an election in Indiana, a voting system must be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

(e) As provided by 42 U.S.C. 15481, an election board conducting an election satisfies the requirements of subsection (d) if the election board provides at least one (1) electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

(f) If a voter who is otherwise qualified to cast a ballot in a precinct chooses to cast the voter's ballot on the voting system provided under subsection (e), the voter must be allowed to cast the voter's ballot on that voting system, whether or not the voter is an individual with disabilities.

SECTION 79. IC 3-11-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Voting System Technical Oversight Program

Sec. 1. As used in this chapter, "program" refers to the voting system technical oversight program established by section 2 of this chapter.

Sec. 2. The voting system technical oversight program is established.

Sec. 3. The secretary of state shall contract with a person or an entity to conduct the program for a term specified in the contract.

Sec. 4. The person or entity designated under this chapter to conduct the program shall do the following:

(1) Develop and propose procedures and standards for the certification, acquisition, functioning, training, and security for voting systems used to conduct elections in Indiana.

(2) Compile and maintain an inventory of all voting systems used to conduct elections in Indiana.

(3) Review reports concerning voting systems prepared by independent laboratories and submitted by applicants for voting system certification.

(4) Recommend to the commission whether an application for voting system certification should be approved and, if so, whether the approval should be subject to any restrictions or conditions to ensure compliance with Indiana law.

(5) Perform any additional testing of a voting system necessary to determine whether the voting system complies with state law.

(6) Each year perform random audits of voting systems used to conduct Indiana elections and prepare reports indicating whether the voting systems have been certified, programmed, and used in compliance with Indiana law.

(7) Review contracts, leases, purchase orders, and amendments to those documents concerning the acquisition or maintenance of voting systems.

(8) Assist with the development of quantity purchase agreements and other contracts for the lease or purchase of voting systems.

(9) Perform any other duties related to the approval or use of voting systems as provided in:

(A) state law; or

(B) the contract described in section 3 of this chapter.

SECTION 80. IC 3-11-17 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 17. Voting System Violations

Sec. 1. This chapter applies to a voting system vendor who sells, leases, installs, implements, or permits the use of a voting system in an election conducted in Indiana.

Sec. 2. In addition to any other penalty imposed, a vendor who knowingly, recklessly, or negligently sells, leases, installs, implements, or permits the use of a voting system in an election conducted in Indiana in violation of this title is subject to a civil penalty under this chapter.

Sec. 3. If the secretary of state determines that a vendor is subject to a civil penalty under section 2 of this chapter, the secretary of state may assess a civil penalty. The civil penalty assessed under this section may not exceed five hundred thousand dollars (\$500,000), plus any investigative costs incurred and documented by the secretary of state.

Sec. 4. The secretary of state is subject to IC 4-21.5 in imposing a civil penalty under this chapter.

Sec. 5. All civil penalties collected under this chapter shall be deposited with the treasurer of state in the voting system technical oversight program account established by section 6 of this chapter.

Sec. 6. (a) The voting system technical oversight program account is established with the state general fund to provide money for administering and enforcing IC 3-11-7, IC 3-11-7.5, IC 3-11-15, IC 11 3-11-16, and this chapter.

(b) The election division shall administer the account. With the approval of the budget agency, funds in the account are available to augment and supplement the funds appropriated to the election division for the purposes described in this section.

(c) The expenses of administering the account shall be paid from the money in the account. The account consists of all civil penalties collected under this chapter."

Page 18, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 82. IC 3-12-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.5. (a) This section applies to counting votes cast on ballot cards.

(b) As used in this section, "chad" means the part of a ballot card that indicates a vote on the card when entirely punched out by the voter:

(c) A chad that has been pierced, but not entirely punched out of the card, shall be counted as a vote for the indicated candidate or for the indicated response to a public question:

(d) A chad that has been indented, but not in any way separated from the remainder of the card, may not be counted as a vote for a

candidate or on a public question:

(e) Whenever:

- (1) a ballot card contains a numbered box indicating which chad should be punched out by the voter to cast a vote for a candidate or on a public question;
- (2) the indicated chad has not been punched out; and
- (3) a hole has been made in the card that touches any part of the numbered box;

the hole shall be counted as a vote for the candidate or on the public question as if the indicated chad had been punched out. However, if a hole has been made in the ballot that does not touch a numbered box or punch out a chad, the hole may not be counted as a vote for a candidate or on a public question:

(f) Whenever:

- (1) a chad has been punched out of a ballot card;
- (2) a numbered box indicates that another chad may be punched out to cast a vote for:
 - (A) a different candidate for the same office as the candidate for whom a vote was cast under subdivision (1); or
 - (B) a different response to the same public question on which a vote was cast under subdivision (1); and
- (3) a hole has been punched in the card that touches the numbered box described in subdivision (2);

neither the chad described in subdivision (1) nor the hole described in subdivision (3) may be counted as a vote for a candidate or on a public question:

(g) (b) This subsection applies to a ballot card that:

- (1) has been cast in a precinct whose votes are being recounted by a local recount commission or the state recount commission;
- (2) is damaged or defective so that it cannot properly be counted by automated tabulating machines; and
- (3) cannot be counted for the office subject to the recount due to the damage or defect.

The ballot card shall be remade only if the conditions in subdivisions (1) through (3) exist."

Page 19, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 84. IC 3-12-3.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. After each electronic voting system has been secured and the paper vote total printouts obtained, the inspector shall announce in a distinct tone of voice the result of the vote as shown by that the printouts are available for inspection by the members of the precinct election board and any watchers present within the polls. The members and watchers are entitled to inspect and copy the printouts to document the votes cast for:

- (1) each candidate in the order as their offices are arranged on each system; and
- (2) each public question on each system."

Page 28, line 34, reset in roman "on a voting".

Page 28, line 34, after "machine" insert "system".

Page 29, delete lines 30 through 32, begin a new paragraph and insert:

"SECTION 112. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 3-5-2-21.5; IC 3-11-15-10; IC 3-11-15-11; IC 3-11-15-50; IC 3-11-15-51; IC 3-11-15-52; IC 3-11-15-53; IC 3-11-15-55; IC 3-11-15-56; IC 3-11-15-57; IC 3-11-15-58.

SECTION 113. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 3-5-2-41.5; IC 3-5-2-41.6; IC 3-5-2-50.6; IC 3-11-3-2; IC 3-11-3-6; IC 3-11-5; IC 3-11-7.5-20; IC 3-11-12; IC 3-11-13-20; IC 3-12-2.5.

SECTION 114. [EFFECTIVE UPON PASSAGE] (a) The definitions set forth in IC 3-5-2 apply to this SECTION.

(b) To perform the duties set forth in IC 3-11-16, as added by this act, in establishing the voting system technical oversight program, the secretary of state shall issue a request for proposals to enter into the contract required under IC 3-11-16-3.

(c) Notwithstanding any other statute or rule:

- (1) the secretary of state shall extend invitations to public and private colleges and universities located within Indiana to respond to the request for proposals not later than June 1, 2005; and
- (2) the secretary of state and the person selected by the secretary of state shall enter into the contract required under IC 3-11-16-3 not later than July 1, 2005.

(d) This SECTION expires December 31, 2005.

SECTION 115. [EFFECTIVE UPON PASSAGE] (a) The definitions set forth in IC 3-5-2 apply to this SECTION.

(b) This SECTION applies to a county:

- (1) that used a punch card ballot voting system to conduct the November 2, 2004, general election in any precinct in the county; and
- (2) whose county executive, before July 1, 2005, has not entered into a contract that complies with this SECTION.

(c) To comply with this SECTION, a contract that a county executive enters into must require a voting system vendor to deliver, not later than December 31, 2005:

- (1) an electronic voting system;
- (2) an optical scan ballot voting system; or
- (3) a combination of both systems;

certified for installation, marketing, and use in Indiana on the effective date of the contract.

(d) If a county described in subsection (b) fails to enter into a contract that complies with subsection (c) before July 1, 2005, the secretary of state may enter into a quantity purchase agreement with a voting system vendor for the purchase of:

- (1) an electronic voting system;
- (2) an optical scan ballot voting system; or
- (3) a combination of both systems;

that is certified for installation, marketing, and use in Indiana on the effective date of the contract.

(e) The agreement described in subsection (d) must require the delivery of the voting system to each county described in this SECTION before January 1, 2006, for use in all elections conducted in the county after December 31, 2005.

(f) This SECTION expires December 31, 2006.

SECTION 116. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to HB 1407 as printed February 9, 2005.), and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 1.

LAWSON, Chair

Report adopted.

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Engrossed House Bill 1646, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 23-2-1-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. (a) This section applies to the following:**

- (1) The secretary of state.**
- (2) The securities commissioner.**
- (3) A prosecuting attorney.**
- (4) The attorney general.**
- (5) A designee of a person specified in subdivisions (1) through (4).**

(b) A person specified in subsection (a) shall not take any action against another person under this chapter solely because a:

- (1) viatical settlement contract; or**
- (2) fractional or pooled interest in a viatical settlement contract;**

that was the subject of a transaction in which the other person was involved before March 17, 2000, was not registered under this chapter.

(c) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not, before March 17, 2000, comply with the:

- (1) registration requirements of this chapter; or**
- (2) requirements of this chapter that apply to a person that offers or sells securities in Indiana;**

if the other person did not, before March 17, 2000, offer or sell securities other than a viatical settlement contract or a fractional or pooled interest in a viatical settlement contract.

(d) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not comply with the registration requirements referred to in subsections (b) and (c)."

Delete pages 2 through 7.

Page 8, delete lines 1 through 31, begin a new paragraph and insert:

"SECTION 2. IC 23-2-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19. (a)** A person who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security.

Damages are the amount that would be recoverable upon a tender less:

- (1) the value of the security when the buyer disposed of the security; and
- (2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

- (1) violates section 8, 12.1(b), 14, or 26 of this chapter;
- (2) employs a device, scheme, or artifice to defraud a person; or
- (3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received due to the advice. It is a defense to an action brought for a violation of section 12.1(b) or 26 of this chapter that the person accused of the violation did not know of the violation and, exercising reasonable care, could not have known of the violation.

(d) A person who directly or indirectly controls a person liable under subsection (a), (b), or (c), a partner, officer, or director of the person, a person occupying a similar status or performing similar functions, an employee of a person who materially aids in the conduct creating the liability, and a broker-dealer or agent who materially aids in the conduct are also liable jointly and severally with and to the same extent as the person, unless the person who is liable sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons liable.

(e) A tender specified in this section may be made at any time before entry of judgment.

(f) A cause of action under this statute survives the death of a person who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by **a governmental entity or** the person bringing the action of a violation of this chapter, and not afterwards. No person may sue under this section:

- (1) if that person received a written offer, before suit and at a time when the person owned the security, to refund the

consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

(A) interest-bearing obligations to be computed at the same rate as provided on the security; and

(B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

(2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity."

Page 9, delete lines 3 through 12.

Page 9, delete lines 25 through 33, begin a new paragraph and insert:

"SECTION 9. IC 27-8-19.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract **that insures the life of an insured** for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

(1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

(2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit."

Page 11, line 11, delete "viatical settlement provider".

Page 13, line 30, after "**department;**" insert "**and**".

Page 13, line 31, delete "; and" and insert ".".

Page 13, delete lines 32 through 38.

Page 14, delete lines 9 through 31.

Page 15, line 22, delete ", " and insert "**or**".

Page 15, line 23, delete ", or viatical representative;" and insert ";".

Page 16, line 8, delete "If the insured has a catastrophic or life threatening".

Page 16, line 9, delete "illness or condition, acknowledges" and insert "Acknowledges".

Page 16, after line 37, begin a new paragraph and insert:

"SECTION 24. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1646 as reprinted February 18, 2005.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 0.

PAUL, Chair

Report adopted.

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed, without amendments, Engrossed Senate Bills 12, 44, 95, 98, 101, 193, 209, 225, 265, 267, 285, 301, 332, 453, 465, 484, 472, and 76 and the same are herewith returned to the Senate.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed Engrossed Senate Bills 79, 56, 89, 149, 206, 213, 218, 227, 242, 266, 298, 306, 327, 335, 378, 397, 414, 417, 433, 442, 446, 460, 467, 518, 578, 590, 609, 615, 619, and 634 with amendments and the same are herewith returned to the Senate for concurrence.

M. CAROLINE SPOTTS
Principal Clerk of the House

MESSAGE FROM THE PRESIDENT PRO TEMPORE OF THE INDIANA STATE SENATE

Madam President and Members of the Senate: I have on March 29, 2005, signed the following House Enrolled Acts: 1032, 1099, 1240, 1540, 1600, and House Joint Resolution 4.

ROBERT D. GARTON
President Pro Tempore

ENGROSSED HOUSE BILLS ON SECOND READING

Engrossed House Bill 1008

Senator Jackman called up Engrossed House Bill 1008 for second reading. The bill was read a second time by title.

SENATE MOTION (Amendment 1008-1)

Madam President: I move that Engrossed House Bill 1008 be amended to read as follows:

Page 3, line 9, strike "A representative of the".

Page 3, line 9, after "commissioner" insert "**The**".

Page 3, line 10, delete "and rural development,".

Page 3, line 10, strike "to be appointed by the governor.".

Page 3, line 10, after "governor." insert **"and rural development or the secretary's designee."**

Page 7, line 33, strike "commissioner" and insert **"secretary"**.

Page 7, line 33, after "agriculture" insert **"and rural development"**.

(Reference is to EHB 1008 as printed March 25, 2005.)

JACKMAN

Motion prevailed. The bill was ordered engrossed.

Engrossed House Bill 1112

Senator Long called up Engrossed House Bill 1112 for second reading. The bill was reread a second time by title.

SENATE MOTION (Amendment 1112-2)

Madam President: I move that Engrossed House Bill 1112 be amended to read as follows:

Page 2, after line 8, begin a new paragraph and insert:

"SECTION 2. IC 35-50-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

(E) confinement (IC 35-42-3-3) with a deadly weapon;

(F) rape (IC 35-42-4-1) as a Class A felony;

(G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;

(H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;

(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;

(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;

(K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;

(L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;

(M) escape (IC 35-44-3-5) with a deadly weapon;

(N) rioting (IC 35-45-1-2) with a deadly weapon;

(O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center;

(P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(R) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death); ~~if the person had:~~

~~(i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood; or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or~~

~~(ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or~~

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended."

(Reference is to EHB 1112 as printed March 25, 2005.)

M. YOUNG

Motion prevailed. The bill was ordered engrossed.

RESOLUTIONS ON FIRST READING

House Concurrent Resolution 18

House Concurrent Resolution 18, sponsored by Senator Skinner:

A CONCURRENT RESOLUTION honoring firefighters Hidekatsu Kajitani, Battalion Chief Paul Watson, and Deputy Chief Darrick Scott.

Whereas, Three brave firefighters risked their lives and exposed their bodies to the extreme cold of an Indiana winter to save an injured man hanging 475 feet above them on a radio telephone tower;

Whereas, On Tuesday, January 18 at 12:58 p.m., the emergency dispatch call came into the Sugar Creek Fire Department in West Terre Haute;

Whereas, Upon arriving at the scene, firefighters found a man, whose condition was unknown, hanging three-fourths of the way up a 625 foot tower;

Whereas, Without thought for their own safety, the firefighters began their climb;

Whereas, Hidekatsu Kajitani, known as Kaji to his friends and coworkers, went first, followed by Battalion Chief Paul Watson, who climbed about halfway up, and Deputy Chief Darrick Scott;

Whereas, Kaji, 26, who came to the United States eight years ago to study criminology at Indiana State University, took emergency medical training as part of earning his bachelor's degree, which he believes helped him receive the position with Sugar Creek Fire Department;

Whereas, While living in his native Japan, Kaji had some experience in rock and mountain climbing, a skill that was very helpful to him on this cold winter's day;

Whereas, After more than a half hour of climbing, Kaji reached the victim, Alan Cook, 45, who had regained consciousness but did not understand what was going on;

Whereas, It took more than an hour to assemble the system of ropes and pulleys that would be used to safely lower Alan Cook from the tower;

Whereas, After more than two hours on the frozen tower, Alan Cook reached the bucket of the Honey Creek Fire Department's ladder truck and the waiting paramedics;

Whereas, Alan Cook had apparently suffered a brain aneurysm; and

Whereas, Throughout our history firefighters have displayed a level of courage and bravery that far exceeds that of ordinary men; these three men are shining examples of how much we owe our brave firefighters: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. That the members of the Indiana General Assembly wish to acknowledge the bravery of these three men and to thank them on behalf of the grateful citizens of the State of Indiana.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Hidekatsu Kajitani, Deputy Chief Darrick Scott, and Battalion Chief Paul Watson.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

ENGROSSED HOUSE BILLS ON THIRD READING

Engrossed House Bill 1057

Senator Wyss called up Engrossed House Bill 1057 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 319: yeas 34, nays 15. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

RESOLUTIONS ON FIRST READING

House Concurrent Resolution 32

House Concurrent Resolution 32, sponsored by Senator Ford:

A CONCURRENT RESOLUTION honoring Jo Ann Gora on her inauguration as the fourteenth president of Ball State University.

Whereas, Jo Ann Gora was inaugurated on March 29, 2005, as the fourteenth President of Ball State University;

Whereas, With her inauguration, Jo Ann Gora became the first female president of a public university in Indiana;

Whereas, Before coming to Ball State University, President Gora, who has a PhD in Sociology, served as the Provost of Old Dominion University and the Chancellor of the University of Massachusetts at Boston;

Whereas, President Gora is to be congratulated for forgoing an inauguration ceremony and using the money to fund 24 scholarships valued at \$32,000 each; and

Whereas, President Gora is to be commended for putting students first and being aggressive in her efforts to assist talented Hoosier students in their pursuit of higher education: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. That the members of the Indiana General Assembly welcome Jo Ann Gora as the fourteenth President of Ball State University and wish her continued success in her new position.

SECTION 2. That the Principal Clerk of the House of Representatives transmit a copy of this resolution to President Gora.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

House Concurrent Resolution 31

House Concurrent Resolution 31, sponsored by Senator Lubbers:

A CONCURRENT RESOLUTION honoring Ball State University's Inaugural Scholars.

Whereas, Ball State President Jo Ann Gora chose to create a student scholarship fund instead of a formal inauguration ceremony;

Whereas, Using the \$150,000 saved in direct and indirect costs of not holding inaugural event, the university established the Inaugural Scholars program;

Whereas, In response to President Gora's unselfish action, Ball State University alumni pledged over a quarter of a million dollars for the Inaugural Scholars program;

Whereas, As of today, Ball State University has awarded 24 inaugural scholarships to top students from around Indiana;

Whereas, These scholarships have a four-year value of \$32,000; and

Whereas, The Indiana General Assembly recognizes the value of education and looks forward to the future achievements of these distinguished Hoosier students: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. That the members of the Indiana General Assembly thank President Jo Ann Gora for establishing the Inaugural Scholars program and welcome her into the family of Indiana higher education.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to President Jo Ann Gora and the trustees of Ball State University.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

House Concurrent Resolution 30

House Concurrent Resolution 30, sponsored by Senator Craycraft:

A CONCURRENT RESOLUTION honoring the Ball State University College of Architecture and Planning on its 40th Anniversary.

Whereas, The Ball State University College of Architecture and Planning (CAP) was created by the Indiana General Assembly on March 23, 1965;

Whereas, The Ball State University CAP has three divisions: Architecture, Landscape Architecture, and Urban Planning;

Whereas, The Ball State University CAP is the only public college of architecture in the state of Indiana;

Whereas, The Ball State University CAP has developed an extensive program of community based projects, which have worked in 300 communities around the state, and has graduated 3,200 students since its inception;

Whereas, The graduates of the Ball State University CAP lead the premiere architecture offices, both public and private, throughout the state;

Whereas, Ball State University CAP students and graduates are responsible for most urban plans developed by Indiana communities; and

Whereas, Both the Ball State University CAP architecture program and landscape architecture program have been ranked among the elite programs in the nation: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. That the members of the Indiana General Assembly acknowledge the good work and dedication of the students and

professors of the Ball State University College of Architecture and Planning in creating an atmosphere conducive to producing many talented architects.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Ball State University President Jo Ann Gora and Dean Joseph Bilello.

The resolution was read in full and adopted by voice vote. The Chair instructed the Secretary to inform the House of the passage of the resolution.

ENGROSSED HOUSE BILLS ON THIRD READING

Engrossed House Bill 1080

Senator Server called up Engrossed House Bill 1080 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning former governors.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 320: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1153

Senator Zakas called up Engrossed House Bill 1153 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 321: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1224

Senator Ford called up Engrossed House Bill 1224 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 322: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1270

Senator Wyss called up Engrossed House Bill 1270 for third

reading:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 323: yeas 45, nays 4. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1302

Senator Jackman called up Engrossed House Bill 1302 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 324: yeas 39, nays 10. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1306

Senator Server called up Engrossed House Bill 1306 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 325: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1335

Senator Kruse called up Engrossed House Bill 1335 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 326: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1358

Senator Miller called up Engrossed House Bill 1358 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 327: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1365

Senator Lewis called up Engrossed House Bill 1365 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 328: yeas 47, nays 2. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1453

Senator Clark called up Engrossed House Bill 1453 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 329: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1580

Senator Ford called up Engrossed House Bill 1580 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 330: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1594

Senator Landske called up Engrossed House Bill 1594 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 331: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1649

Senator Weatherwax called up Engrossed House Bill 1649 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 332: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1666

Senator Jackman called up Engrossed House Bill 1666 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 333: yeas 49, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1765

Senator Weatherwax called up Engrossed House Bill 1765 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 334: yeas 48, nays 1. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

Engrossed House Bill 1776

Senator Miller called up Engrossed House Bill 1776 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 335: yeas 48, nays 1. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Chair instructed the Secretary to inform the House of the passage of the bill.

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed House Concurrent Resolution 30 and the same is herewith transmitted for further action.

M. CAROLINE SPOTTS
Principal Clerk of the House

SENATE MOTION

Madam President: I move that Senator Waterman be added as cosponsor of Engrossed House Bill 1649.

WEATHERWAX

Motion prevailed.

SENATE MOTION

Madam President: I move that Senators Paul, Craycraft, and R. Young be added as cosponsors of Engrossed House Bill 1580.

FORD

Motion prevailed.

SENATE MOTION

Madam President: I move that Senators Kruse and Dillon be added as cosponsors of Engrossed House Bill 1057.

WYSS

Motion prevailed.

SENATE MOTION

Madam President: I move that Senator Kruse be added as cosponsor of Engrossed House Bill 1224.

FORD

Motion prevailed.

SENATE MOTION

Madam President: I move that Senators Simpson, R. Young, and Howard be added as coauthors of Engrossed Senate Bill 615.

SERVER

Motion prevailed.

SENATE MOTION

Madam President: I move that Senator Drozda be added as cosponsor of Engrossed House Bill 1008.

JACKMAN

Motion prevailed.

SENATE MOTION

Madam President: I move that Senator Broden be added as cosponsor of Engrossed House Bill 1403.

PAUL

Motion prevailed.

SENATE MOTION

Madam President: I move that Senator Drozda be added as cosponsor of Engrossed House Bill 1141.

HARRISON

Motion prevailed.

SENATE MOTION

Madam President: I move we adjourn until 1:30 p.m., Thursday, March 31, 2005.

GARTON

Motion prevailed.

The Senate adjourned at 3:35 p.m.

MARY C. MENDEL
Secretary of the Senate

REBECCA S. SKILLMAN
President of the Senate